



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** W.O. Blackstone & Co., Inc.

**File:** B-242388.2

**Date:** July 19, 1991

Daniel T. Brailsford, Esq., Robinson, McFadden & Moore, for the protester,  
Dennis L. Shuman for Julian Speer Company, an interested party,  
Gabriel N. Steinberg, Esq., General Services Administration, for the agency,  
David Hasfurther, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest filed with the General Accounting Office more than 10 working days after the protester knew or should have known the basis of its protest is untimely.

### DECISION

W.O. Blackstone & Co., Inc. protests the termination of the contract awarded it under invitation for bids (IFB) No. GS-04P-90-EXC-0097 and the subsequent award made to Julian Speer Company. The IFB was issued by the General Services Administration (GSA) for the installation of a closed circuit evaporative cooler system at the Strom Thurmond Federal Building/Courthouse in Columbia, South Carolina. Blackstone's contract was terminated for convenience after GSA determined that the bid modification that made Blackstone's bid price low should not have been considered since it had been received after bid opening. Blackstone argues that the award to Speer was improper because GSA had been telephonically notified of its bid modification prior to bid opening by Western Union and because the termination was used improperly to resolve a Speer protest against the award to Blackstone.

We dismiss the protest.

Four bids were received as of the 2:30 p.m., October 24, 1990, bid opening. Speer submitted the low bid of \$278,000. Blackstone's bid was \$400,000. However, after bid opening the contracting officer was advised by the Business Service Center (BSC), the bid depository, that Blackstone had submitted a bid

modification by Western Union telegram/mailgram which reduced its bid price by \$135,300 to \$264,700. Accordingly, award was made to Blackstone on the basis of its modified low bid of \$264,700. In response to a protest against the award (and thus against the acceptance of Blackstone's modification) filed in December by Speer, GSA determined that there had apparently been a miscommunication between BSC and the contracting officer as to when the modification had been received. The government time/date stamp on the telegram/mailgram showed it had been received after bid opening on October 25 at 11:37 a.m. No record was found that showed BSC/GSA had any knowledge of the modification prior to the receipt of the telegram/mailgram.

The GSA contract specialist orally informed Blackstone on December 19 of Speer's protest and of the fact that an investigation conducted by GSA in response to the protest found no record of any modification or notice of a modification having been received by BCS/GSA prior to bid opening. During this conversation and in response to this advice, Blackstone argued that BSC/GSA had been timely notified of the modification and that if it had no record of that notification it could only be due to government mishandling. After determining that the modification had not been received until after bid opening, GSA concluded that the modification should not have been considered and that the award to Blackstone was improper. By letter of January 17, 1991, GSA advised Blackstone that its contract was terminated and that it had the right to appeal the termination to the GSA Board of Contract Appeals (GSBCA). On March 15, award was made to Speer.

We find that Blackstone knew or should have known of the reason for the termination of its contract at the time of the termination. It knew that GSA had no record of having received telephonic notice of the modification, that the only evidence of the modification that GSA had was the telegram/mailgram received after bid opening, and that this issue was the subject of a protest. Notwithstanding, Blackstone failed to pursue or file its protest against the termination of its contract with our Office until it did so by letter of March 22 (received by us on March 25). Our Bid Protest Regulations require a protest to our Office to be filed not later than 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). Here, Blackstone's protest to our Office was clearly filed more than 10 working days after it knew or

should have known the basis of its protest.<sup>1/</sup> The fact that Blackstone's protest was filed within 10 working days of the award to Speer is irrelevant since it is the termination of Blackstone's contract, not the award to Speer, that forms the basis of Blackstone's protest. See generally Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268, aff'd, B-238055.2, July 30, 1990, 90-2 CPD ¶ 79.

The protest is dismissed.



Michael R. Golden  
Assistant General Counsel

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<sup>1/</sup> By letter of March 1, Blackstone did initiate and later pursued an appeal of the termination with the GSBICA. However, filing with the GSBICA does not toll the running of our filing requirements. Hilda A. Phelps--Recon., B-242329.2, Mar. 12, 1991, 91-1 CPD ¶ 273. Furthermore, we note that the protester did not diligently pursue its basis of protest, if in fact it was reasonably unaware of the basis of protest at the time of GSA's termination of its contract.